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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1966 OF 1999

Vidyt Metallica Ltd.,
& Anr. ... Petitioners.
vs.

Board of Trustees of the
Port of Mumbai & Ors. ... Respondents.

Mr. Phiroz Palkhiwala a/w Pritesh Rajgor
i/by Doijode & Asso.
for Petitioners.

Mr. U.J. Makhija i/by Mulla & Mulla
for R. Nos. 1 & 2.

Ms. S.V. Bharucha for R. Nos. 3 & 4.

CORAM : S.U.KAMDAR, J.

DATE : 29th March, 2006.

ORAL JUDGMENT :

. By the present writ petition the petitioners are challenging the orders dated 17.12.1998 and 29.12.1998 and demand made by the 1st respondent dated 8.1.1999 as illegal and null and void. It is further prayed that the claim of demurrage and wharfage charges of Rs. 17,16,648/- with interest at the rate of 18% per annum be declared is illegal

and unlawful. Alternatively, by prayer (d) it has been prayed that in the event of the Court coming to the conclusion that the petitioners are liable to pay the said demurrage charges to the 1st respondent then the Court should direct the 3rd respondent to make the aforesaid payment. The 3rd respondent is the Collector of Customs. Some of the material facts of the present case, briefly stated, are as under :-

2. The 1st petitioner is a company inter alia engaged in export of various products. The petitioners manufacture Shaving Razor Blades, Twin Track Shaving Systems and machineries used for manufacturing the same. On 26.3.1996, the petitioners decided to export the consignment of seven wooden cases containing High Speed Twin Track Assembly Machine against Shipping Bill No. 735680 dated 22.3.1996. On 27.3.1996, the Special Investigation Intelligence Branch of the Customs Authorities detained the said consignment on the allegation that the value declared by the petitioners was excessive and thus there was an over valuation of the consignment. On 2.4.1996 the valuation was carried out of the said machine. On 4.5.1996, the petitioners requested for release of the consignment for the purpose of export thereof. However, only on 1.7.1996 the Chief Commissioner of Customs permitted a provisional release of the said

consignment on petitioners providing a bond for the full value declared and bank guarantee in the sum of Rs. 10 lacs. On 24.8.1996, the petitioners complied with the said demand of the Customs Authorities and effected provisional release and exported the said consignment. In the meantime, the 1st respondent demanded towards wharfage and demurrage an amount of Rs. 19,85,520/- for the period from 27.3.1996 to 20.8.1996. On 11.1.1997, the petitioners requested the Customs Authorities to issue detention certificate for detaining the said consignment for ITC formalities. Since the Customs authorities failed to issue the detention certificate, the petitioners filed a writ petition in this Court being Writ Petition No. 582 of 1997. On 11.2.1997, the respondent no. 1 passed an order inter alia holding that the petitioners are liable to make payment of the demurrage and wharfage charges. The said order was passed on the application of the petitioners for remission in demurrage charges under section 53 of the Major Port Trusts Act, 1963. The petitioners thereafter applied for review of the said order dated 11.1.1997 passed by the respondent no. 1 but the same was rejected by an order dated 25.3.1997. On 2.5.1997, the writ petition of the petitioners being Writ Petition No. 582 of 1997 came up for hearing before the Division Bench of this Court and by an order of the same date the Customs Authorities were directed

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to complete the hearing on a show cause notice issued within a period of one month. It was further made clear that if finally it is adjudicated that the petitioners were entitled to export the consignment, the 4th respondent will issue necessary detention certificate in favour of the petitioners herein. It is further directed that if necessary detention certificate is issued by the 4th respondent then the respondent no. 1 will proceed to consider the same in accordance with the law and grant remission and till that time the Port Trust Authority will not take any coercive steps for recovery of demurrage charges.

3. On 30.5.1997, the Asstt. Commissioner of Customs issued a show cause notice under section 124 of the Customs Act for breach of the provisions of the Customs Act for over valuation of the export consignment. On 1.7.1997 the Customs Authorities imposed a penalty of Rs. 5 lacs each on the 1st petitioner and on a director of the 1st petitioner under Section 114(1) of the Customs Act. An appeal was filed before the Customs, Excise and Gold Control Appellate Tribunal and by an order dated 7.11.1997 the said order passed by the Customs authorities was set aside and the appeal preferred by the petitioners was allowed. The ground on which the said appeal was allowed was that the customs authorities had no jurisdiction to impose a penalty

on the ground of over valuation because it was not a breach of the Customs Act but it is a breach of the provisions of FERA Act. On 16.12.1997, the order passed by the Division Bench of this Court in Writ Petition no. 582 of 1997 dated 2.5.1997 was challenged. By an order dated 3.8.1998, the Supreme Court disposed of the said Special Leave Petition by recording the statement of the Customs authorities that they will issue a detention certificate within four weeks from the said date and if such a detention certificate is issued, it will be considered by the Port Trust authorities in accordance with law. It was further made clear that if there is any liability determined by the respondent no. 1 to pay the demurrage charges then the same will be payable by the petitioners. On 7.11.1997, the Customs Authorities filed a reference application against the order dated 7.11.1997 passed by CEGAT and by an order dated 1.9.1998 the said reference application filed by the Customs Authorities has been dismissed. On 18.9.1998, the Customs Authorities issued a certificate to the petitioners what is known as detention certificate stating therein that the said goods were detained for the purpose of bonafide customs formalities. However, the said detention certificate was not in a proper format and accordingly on 15.10.1998 the Customs Authorities issued a fresh detention certificate as per the prescribed format and

forwarded the same to the Port Trust Authorities. On 20.10.1998 the petitioners thereafter applied to the Port Trust Authorities for second review of the earlier orders dated 11.1.1997 and 25.3.1997 and consider the case of the petitioners in the light of the policy formulated by respondent no. 1 in view of the issuance of the detention certificate by the Customs authorities. The said application for second review of both the orders of payment of the demurrage charges also came to be rejected by an order dated 8.12.1998. The said order of the Port Trust was communicated to the petitioners by a letter dated 17.12.1998 in which it has been inter alia mentioned that the review for grant of remission for demurrage charges has been rejected. By a letter dated 23.12.1998 the petitioners once again approached the Port Trust Authorities inter alia stating therein that you please review the matter as it seems therefrom that the detention certificate issued by the Customs Authorities and forwarded to the Port Trust Authorities has not been considered. Thereafter by a letter dated 29.12.1998 the Port Trust authorities informed that in fact the decision has been taken at a meeting held on 8.12.1998 considering all aspects of the matter and that the petitioners claim for remission for demurrage charges is not found within the permissible policy even after issuance of the detention certificate and, therefore, the claim is

liable to be rejected. On 31.12.1998 the petitioners requested the 1st respondent to give a certified copy of the policy decision. On 8.1.1999, the respondent no. 1 sought to enforce the said claim of demurrage charges and fresh recovery notice was issued. On 2.6.1999 the port Trust Authorities filed a contempt petition being Contempt Petition No. 54 of 1999 inter alia contending that the petitioners had committed a breach of the said order dated 2.5.1997. A reply was filed by the Port Trust Authorities on 16.7.1999 and after hearing the matter on 23.7.1999 the Court has declined to take any action and permitted the petitioners to challenge the order passed by the Port Trust Authorities by filing a writ petition. Accordingly, the present writ petition is filed and the petitioners are claiming that there is no liability to make payment of the demurrage charges to the Port Trust Authorities and that the demand of the Port Trust Authorities is liable to be rejected.

4. The learned counsel for the petitioners in support of the aforesaid contention has contended before me that the original order of levying penalty on the export consignment on the ground of over valuation has been successfully challenged and the same has been quashed and set aside. It has been further contended that thus it is evidenced that the detention of the consignment was illegal and the

petitioners are not responsible for the delay in exporting the said goods. It has been further contended that in fact the authorities have issued a detention certificate holding that there is a bonafide ITC formalities undertaken and thus the said goods were detained. It is further contended that once having detained the goods for bonafide ITC formalities for the purpose of export, it is not permissible for the respondent no. 1 to claim demurrage and wharfage charges from the petitioners and the Port Trust Authorities are bound to accept the detention certificate issued by the Customs authorities. It has been further contended that the order passed by the BPT is nonest and illegal. It has been contended that in that light of the fact the respondent authorities ought to have accepted the said detention certificate and granted permission as per the policy. Alternatively it has been contended that even if the case of the petitioner does not fit in a policy issued by the Government of India and adopted by the Port Trust for remission of demurrage charges because as contended by the respondent no. 1 it only applies to the import of the consignment and not to the export of the consignment then also respondent no. 1 ought to have exercised the power of remission by resorting to the main provision of Section 53 of the Major Port Trusts Act, 1963 independent to the said policy and ought not to have rejected the said claim

merely by holding that the said claim do not fall within the four corners of the policy published by the Government and adopted by the respondents herein. It has been thus contended that there is a failure on the part of the respondent no. 1 to exercise jurisdiction for granting remission which is vested in them under section 53 of the Major Port Trusts Act and accordingly the order is liable to be quashed and set aside with the direction to the respondent no. 1 to consider the case of the petitioner. In the facts and circumstances of the present case, the petitioners are not liable at all to make payment of the demurrage and/or wharfage charges. It has been contended by the petitioner that the failure to exercise jurisdiction under Section 53 of the Major Port Trust Act, 1963 which is a main source of power is evident from the fact that the rejection of the application for demurrage charges is only on the basis that it does not fall within the policy decision and they have failed to exercise a power independent to the said policy decision which is vested in them under section 53 of the Major Port Trusts Act, 1963. It has been thus contended that the respondents order is liable to be quashed and set aside and the case of the petitioners is required to be considered for grant of remission of demurrage charges afresh under S. 53 of the said Act.

5. Further, alternatively it has been contended by the petitioners that even if the Port Trust Authorities are entitled to reject the claim of remission of the demurrage charges of the petitioners under the provisions of the Major Port Trusts Act then in that event the only authority which is responsible for detaining the goods illegally and unauthorizedly i.e. respondent nos. 3 and 4 namely, the Customs authority be held liable to pay the necessary demurrage charges and not the petitioners herein. It has been contended that the liability of the respondent nos. 3 and 4 is established because not only the fact that the order passed by the respondent nos. 3 and 4 of imposing penalty has been quashed and set aside by CEGAT and the order of CEGAT has been upheld by this Court but after accepting the said order they have also issued a detention certificate. Thus, if the detention certificate is not accepted by the respondent no. 1 it is the liability of the respondent nos. 3 and 4 to pay the said demurrage charges and not the petitioners herein.

6. In support of the aforesaid contention, the learned counsel for the petitioners has placed reliance on Section 53 of the Major Port Trusts Act which inter alia confers a power of exemption or remission of the demurrage charges in special cases for reasons to be recorded in writing. The

provisions of Section 53 of the Major Port Trusts Act, 1963 reads as under :-

"53. A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied."

7. The learned counsel for the petitioners has thereafter contended that the policy decision taken by the Government as evidenced by a circular is only a matter of guide-lines and the resolution passed by the authorities on the basis of the said circular also covers only the part of the cases. It has been contended that the said guide-lines and the said circulars and the resolution passed as a consequence of the said guide-lines is not exhaustive and does not cover all categories and cases falling under section 53 of the Major Port Trusts Act, 1963. It has been thus contended that the authorities are bound to consider the case of the petitioners independent to the said guide-lines and the said resolution and inaction on their part to do so is illegal and unlawful. In support of the aforesaid

contention, the learned counsel for the petitioners has relied upon the judgment of the Apex Court in the case of Indian Railway Construction Co. Ltd., vs. Ajay Kumar, reported in (2003) 4 SCC 579. The aforesaid judgment is relied upon in favour of the contention that whenever there is a failure to exercise discretion under the discretionary power conferred by the statute then it is permissible for the Court to take note of such inaction and give a direction to consider the case. In so far as the aforesaid proposition of law is concerned, which has been propounded by the learned counsel for the petitioners, I am of the opinion that it is now well settled that the power of judicial review of the Court under Article 226 of the Constitution of India includes all cases where the orders are passed by the authorities or even where the authorities have failed to exercise jurisdiction vested in them. Thereafter the learned counsel relied upon the judgement of the Apex Court in the case of U.P. State Road Transport Corporation and Another, vs. Mohd. Ismail and others, reported in (1991) 3 SSC 239, particularly para 13 of the said judgment which reads thus :-

"13. In the instant case, the Corporation has denied itself the discretion to offer an alternative job which the regulation requires it to exercise in individual cases

of retrenchment. As earlier stated, the Managing Director has issued two circulars; (i) dated December 19, 1986 and (ii) dated March 12, 1987 directing the Regional Managers to dispense with the services of the drivers who are found to be medically unfit to drive the vehicles. It is directed in the circulars that such drivers should be paid benefits like retrenchment compensation which they are entitled to under the U.P. Industrial Disputes Act. The circulars thus leave no scope for exercising discretion to consider the individual cases of retrenched drivers for any alternative job. It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases. The concerned authority of the Corporation therefore, notwithstanding the said circulars are required to consider the cases of retrenched drivers for alternative jobs."

Relying upon the aforesaid observations of the Apex Court the learned counsel for the petitioners has

contended that the policy which has been formulated by the Government and adopted by the resolution of the 1st respondent cannot fetter the jurisdiction and power vested under the statute under section 53 of the Major Port Trust Act and, therefore, it was the duty of the respondent no. 1 to consider the case of the petitioner independent to the said policy and the said guide-lines under the statute itself. It is therefore contended that having failed to do so, it is the duty of the respondent no. 1 to consider the same independently and therefore necessary directions should be issued to the 1st respondent.

8. The learned counsel for the petitioner has thereafter contended that even if the 1st respondent is not bound to accept the detention certificate then in that event it is the customs authorities who should be directed to make the payment of the demurrage and wharfage charges to the Port Trust Authorities and not the petitioners herein. He has also relied upon the judgment of the Calcutta High Court in the case of Donald & Macarthy (P) Ltd., vs. Union of India, reported in 1997 (89) E.L.T. 53 (Cal.). He has also relied upon the judgment of the Madras High Court in the case Anuma Precision Tool Pvt. Ltd., vs. Collector of Cus. Madras, reported in 2000 (121) E.L.T. 309 (Mad.). He has thereafter relied upon the judgment of the Division Bench of

the Andhra Pradesh High Court in the case of Sujana Steels Ltd, . vs. Commissioner of Customs & C. EX. (Appeals), Hyderabad, reported in 2002 (141) E.L.T. 343. He has thereafter relied upon the judgment of the Division Bench of the Delhi High Court in the case of Om Petro Chemicals vs. Union of India, reported in 2002 (140) E.L.T. 353 (Del.). He has thereafter relied upon the judgment of the Division Bench of the Delhi High court in the case of Sundeep Industries and Another vs. Collector of Customs, New Delhi & Ors. reported in 1991 (37) ECR 595 (Delhi). He has thereafter relied upon the judgment of the Calcutta High Court in the case of Surabhi Leathers Pvt. Ltd., vs. Collector of Customs, reported in 1992 (59) E.L.T. 253.

9. The learned counsel for the petitioners while relying upon the judgment of the Apex Court in the case of Padam Kumar Agarwalla v. The Additional Collector of Customs, Calcutta and others, reported in AIR 1972 SC 542, particularly para 14 of the said judgment which is reproduced hereinunder has contended that the principle mentioned therein should be accepted in case of demurrage and wharfage charges also. Para. 14 of the said judgment reads as under :-

"14. Now coming to the question of issuing a writ of mandamus directing the respondents

or any of them to deliver possession of the seized goods, we would have found no difficulty in issuing the mandamus asked for if the seized goods had been in the possession of the customs authorities. But admittedly those goods are in the possession of the Port Commissioners. In law they have a lien over the goods for the rent and other charges due to them. Some-one has to pay those charges before taking possession of the goods. Consequently we cannot issue a writ of mandamus to the port Commissioners to deliver the goods in question nor can we issue a writ to the other respondents to deliver possession of those goods as they are not in possession of the same. This is undoubtedly a hard case. The appellant has been unlawfully deprived of the possession of his valuable goods because of the illegal action of the customs authorities and thereby he could not fulfil the terms of his contract with the Cairo firm as a result of which he must have suffered considerable loss. In addition, he cannot now take possession of the goods which were seized from him without paying the charges due to the Port Commissioners. We were given to understand that the charges due to the Port Commissioners amount to more than the value

of the goods themselves. It is only fair and just that the customs authorities who are responsible for this situation should bear the burden; but in this writ petition we cannot give any relief in that regard. We can only leave the matter to the good sense of the customs authorities to take the appropriate steps and avoid possible further litigation."

10. On the other hand, the learned counsel for the respondent nos. 1 and 2 has contended that the contention of the petitioners that the petitioners are entitled to the remission of demurrage charges is without any merit. The learned counsel for the respondent nos. 1 and 2 has contended that the case of the petitioners has been considered both under the policy as well as under section 53 of the Major Port Trust Act. He has drawn my attention to three orders which are passed by the Port Trust Authorities. First order was passed on 11.2.1997 which is Exhibit-1 to the affidavit in reply. This order was passed even before the detention certificate was issued. At the time of considering the said case in the order various reasons are given. The first reason given is that the petitioners have committed delay in effecting delivery of the goods from 1.7.1997 when Customs Authorities already passed an order for release of

the goods whereas the petitioners did not export the goods right upto 23.8.1997. The second reason given by the Port Trust Authority is that since the charge of over valuation was made against the petitioners, that was the reason for seizure of the goods. These reasons do not amount to any special reasons. The further reason was mentioned that the export is allowed only provisionally. The further reason mentioned therein is that delay is not on account of the Port Trust Authorities and the last reason given is that the remission is admissible only under paras 1 and 2 of the Government guide-lines and not otherwise. The Authorities have also mentioned that the port trust authorities are entitled to levy demurrage charges immediately after stuffing of cargo inside the terminal and therefore also charges are liable to be paid by the petitioners. For all these reasons the remission application has been rejected. It has also been brought to my notice that thereafter review application was filed and almost for identical reasons the review application was also rejected on 25.3.1997. He has further submitted that thereafter the petitioners obtained detention certificate and called upon the authorities to reconsider their case and accordingly the respondent authorities were required to reconsider the case and thereafter passed another order dated 8.12.1998 rejecting the case of the petitioners. However, in the order dated 8.12.1998

it is the case of the 1st and the 2nd respondents that the claim of the petitioners is considered under section 53 of the Major Port Trusts Act as well as under the policy and the said claim has been rejected. Thus, the learned counsel for the respondent nos. 1 and 2 submits that the arguments of the learned counsel for the petitioners that their case is not considered by the respondents 1 and 2 de hors the policy and under section 53 of the Major Port Trusts Act is not sustainable. The learned counsel for the respondent nos. 1 and 2 has also brought to my attention the judgment of the Apex Court in the case of International Airports Authority of India and others vs. Grand Slam International and others, reported in (1995) 3 SCC 151, particularly para 66 of the said judgment. The said para 66 of the said judgment reads as under :-

"66. From the above decisions of this Court it becomes clear that an authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1961, would be entitled to charge demurrages for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the customs area, due to fault on the part of the Customs

Authorities or of other authorities who might have issued detention certificates owning such fault."

The learned counsel for respondent nos. 1 and 2 submitted that pursuant to the judgment of the Apex Court in the aforesaid case, the question of Port Trust not charging the demurrage charges does not arise. The learned counsel for the respondent nos. 1 and 2 has thereafter relied upon the judgment of the Apex Court in the case of Shipping Corporation of India Ltd., etc., etc., v. C.L. Jain Woolen Mills and ors. reported in AIR 2001 SC 1806 as well as the judgment of the Apex Court in the case of Union of India and others v. M/s. R.C. Fabrics (P) Ltd., and another reported in AIR 2002 SC 191 particularly para 16 thereof and has contended that the contention of the petitioners that the respondent nos. 1 and 2 must grant remission on demurrage charges is baseless and without any substance.

11. The respondent nos. 3 and 4 who are the customs authorities have contended that under the provisions of section 155 of the Customs Act the action taken by the authorities is bonafide and Customs Authorities cannot be held liable for individual action of the officer unless it can be shown that the action is malafide. It has been thus

contended that the Customs Authority is not liable to make payment of any demurrage charges under section 155 of the Customs Act, 1963. The learned counsel for respondent nos. 3 and 4 has thereafter placed reliance on the judgment of the Apex Court in the case of International Airports Authority vs. Grant Slam International of India, (supra). The learned counsel for the respondent nos. 3 and 4 has thereafter placed reliance on the judgment of the Apex Court in the case of Trustees of Port of Madras vs. Nagavedu Lungi & Co. reported in 1995 (8) E.L.T. 241 (S.C.) and it has been contended that in the light of the judgment in which it has been held that the liability to pay demurrage charges and other incidental charges by the importer-consignee equally applies to the exporter-consigner of the goods also and therefore, it is the liability of the petitioners. The learned counsel for the respondent nos. 3 and 4 has thereafter relied upon the judgment of this Court in the case of Modern Rubber Industries vs. Union of India reported in 2003 (154) E.L.T. 571 (Bom.) particularly paras 14, 15 and 16 thereof which read as under :-

"14. Having considered the rival submissions, we find much substance in the submission advanced by the learned Counsel for the Revenue. Under Section 155 of the Act, all the actions of the officers of the

Government or Local Authorities for anything done, or intended to be done in good faith, in pursuance of the Customs Act and Rules or Regulations are protected. None of the authorities have recorded any finding saying that the orders passed by the authorities below were mala fide and that they were actuated by malice. If none of the orders were mala fide and if each of the orders of the authorities below can be justified on the ground of bona fide action, then, in that event we are of the opinion that the Customs Department cannot be saddled with the warehousing charges.

15. It is the case of the Customs Authorities that by a letter dated 2nd June, 1997, they had called upon the petitioner to pay the balance penalty amount and the redemption fine and clear the goods from the warehouse. This contention of the Revenue has not been denied by the petitioner. In this view of the matter, it cannot be said that the Customs Authorities deliberately or with a mala fide intention had declined to clear the goods. In the order dated 4th September, 1996, the CEGAT had reduced the fine and penalty imposed upon the petitioner. There was no issue of CVD

before CEGAT. Therefore, if the Customs Authorities had agreed to clear the goods on payment of penalty and redemption fine as determined by the CEGAT and on payment of CVD, it cannot be said that the Customs Authorities were declining to clear the goods in spite of the order of CEGAT. It may be that, ultimately, the Customs Authorities accepted the contentions and held that the CVD is not leviable on the goods imported by the petitioner. That itself cannot be a ground for claiming warehousing charges from the Customs Department.

16. The Apex Court in the case of Board of Trustees of the Port of Bombay v. I.G. Supplying Co. reported in AIR 1977 SC 1622, has held that even though the delay in clearing the goods was not due to negligence of the importer for which he could be held responsible, yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law, the validity of which cannot be questioned. The Apex Court has reiterated the above proposition of law in the later decisions in the case of International Airport Authority of India v. Grand Slam International, 1995 (77) E.L.T.

753 and in the case of Trustees of Port of Madras v. Nagavedu Lungi & Co., 1995 (80) E.L.T. 241. In this view of the matter, we are of the opinion that the delay in clearance of the goods cannot be attributed to the Customs Department and the petitioner cannot be absolved of their obligation to pay the demurrage charges payable on the goods imported by the petitioner."

12. The learned counsel for the respondent nos. 3 and 4 has thereafter relied upon an unreported judgment of the Division Bench of this Court in the case of Writ Petition No. 3553 of 1998 (M/s. Santogen Sill Mills Ltd., and Anr. vs. Union of India and ors) dated 28.4.2005 and another unreported judgment of the Division Bench in Writ Petition No. 5788 of 1997 (Apollo Paper Mills Ltd., vs. Union of India & Ors.) dated 28.10.2005 and has contended that in so far as this Court is concerned, the consistent view taken is that the Customs authorities cannot be saddled with the liability of demurrage and wharfage charges unless it can be shown that the customs authorities are not entitled to protection under Section 155 of the Customs Act, 1963.

13. Considering the rival submissions advanced before me by all the parties, I am of the view that

in so far as the contention of the petitioners is concerned that the claim of the petitioners is not considered under section 53 of the Major Port Trust Act, 1963, the same is required to be rejected. It is on record that even before the issuance of the detention certificate the case of the petitioners was considered and the reasoned order was passed by the authority on 11.1.1997 which is at Exhibit-1 to the affidavit in reply. In that light of the matter the case of the petitioners is considered not only from the angle of guide-lines which are issued by the Government but also other factors have been considered which are set out in the order and the authorities have come to the conclusion that the case of the petitioners do not fall under any special case as required under the provisions of Section 53 of the Major Port Trust Act. If the power of remission has to be exercised by the authorities then it has to be exercised only if the case is a special case as contemplated under Section 53 of the Major Port Trust Act. It is the authorities submission that the petitioners case for the purpose of over valuation of the consignment and consequential setting aside thereof on the ground that the Customs Authorities have no jurisdiction to pass such an order would not amount to any special case under Section 53 of the Major Port Trust Act calling upon the Port Trust Authorities to give a remission of demurrage charges under section 53 of

the Act. In my opinion that what is a special case or not is ultimately a decision of the Port Trust Authorities. On the facts narrated in the order, in my opinion, no case is made out of any special case by the petitioners herein and, therefore, the petitioners claim for demurrage charges has been rightly rejected. It has been further submitted that even thereafter twice the petitioners applied for review and on the last occasion when the petitioners produced the detention certificate and demanded the benefits of the policy guide-lines issued on the basis of the ITC formalities and detention certificate and that the respondent nos. 1 and 2 rejected the said claim on the ground that the petitioners case do not fall under para 2 of the said guide-lines which has been incorporated by way of resolution by the respondent nos. 1 and 2 under section 53 of the Major Port Trust Act. It has been pointed out that the guide-lines provides that detention certificate must be for bonafide ITC formalities in respect of import of goods. This requirement petitioners have failed to establish. It has been also pointed out that guide-lines apply to import consignment and not to export consignment and thus the respondents are entitled to reject the claim of the petitioners and the same is accordingly validly done. I am of the opinion that in the light of the judgment of the Apex Court in the case of International Airport Authority (supra) the

respondents are not bound to accept the detention certificate issued by the Customs Authorities and are entitled to consider the case on its own merits. In the present case the case of the petitioners has been considered by them on the ground whether the petitioners are entitled to the benefits of the policy issued by the government and admittedly the petitioners case do not fall under the said guide-lines issued by the government and the petitioners case is also considered independent of the said guide-lines as is evidenced from the three orders issued by respondent nos. 1 and 2 and thus it is not possible to hold that the respondent nos. 1 and 2 have failed to exercise their jurisdiction under section 53 of the Major Port Trust Act, 1963. In that light of the matter, it is not possible to grant relief to the petitioner that the petitioners case should be considered again under section 53 of the Major Port Trust Act. The reasons given by the respondent nos. 1 and 2 for rejecting the case of the petitioners independent of guide-lines that the petitioners case do not fall in special cases because of the conduct on the part of the petitioners which is narrated in the said orders including the non-exporting the goods from 1.7.1997 to 24.8.1997 though the Customs authorities had already passed a provisional export order of the said goods as well as case of the petitioner being of a over valuation of the export consignment though

the said order has been set aside on the ground of lack of jurisdiction do not form a case of a special case so as to grant remission and in my opinion the said reasoning cannot be faulted with.

14. The reasons given by the authorities are not extraneous or not germane to the issue before the authorities nor the said reasons are perverse nor any case is made out for the same to be set aside. In my opinion, the reasoning of the orders indicate that the case of the petitioners do not fall in any special case and, therefore, the respondent nos. 1 and 2 have rightly rejected the claim of the petitioners for giving demurrage or wharfage charges.

15. Now coming to the contention of the petitioners that in that event the Customs Authorities should be directed to pay the demurrage charges. Though the authorities which were cited by the petitioners which are of different High Courts do indicate that in many cases the Customs Authorities can be directed to make payment of the demurrage charges. However, in view of the judgments of the Division Bench of this Court in the case of Modern Rubber Industries Vs. Union of India reported in 2003 (154(E.L.T. 571 and in the case of Writ Petition No. 3553 of 1998 (M/s. Santogen Sill Mills Ltd., and Anr. vs. Union of India and

ors) dated 28.4.2005 and another unreported judgment of the Division Bench in Writ Petition No. 5788 of 1997 (Apollo Paper Mills Ltd., vs. Union of India & Ors.) dated 28.10.2005 which are binding on me in which this Court has taken the view that the Customs Authorities are protected by provisions of Section 155 of the Customs Act I am of the view that it is not possible to accept the aforesaid contention of the petitioner in the present case. There is no case of mala fide pleaded in the petition nor the same is argued before me. Thus the provisions of Section 155 of the Act will apply with full force. Though the view taken by the various Division Benches is not in conformity with the view taken by this Court, however, in the light of the fact that the judgment of the Division Bench of this Court which is holding the field is relevant and binding upon me, it is not possible for me to accept the contention of the petitioners by relying upon the various judgments of the various High Courts to direct the Customs Authorities to pay demurrage and wharfage charges. The reliance placed on the judgment of the Apex Court in the case of Padam Kumar Agarwalla (supra) is misconceived. In fact the judgment makes it very clear that the demurrage and wharfage charges are to be paid before taking delivery of the goods and in fact the Court has held that in a writ petition no such relief can be granted and the same is left to the Customs

Authorities for taking appropriate steps or to file further litigation. The judgment is not an authority on the proposition of law that in cases where the goods are detained by the authorities and such detention having being set aside by the courts or tribunal then in every such case the Court should grant a relief of making payment of demurrage charges by the Customs Authorities. In fact the judgment holds that the writ jurisdiction is not an appropriate remedy for granting such relief. In the light of the aforesaid position of law, it is also not equally possible to pass any order directing the Customs Authorities to make payment of any demurrage or wharfage charges to the Mumbai Port Trust Authorities. Accordingly, the petition must fail. Petition is therefore dismissed. However, there shall be no order as to costs.